UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE CELEXA AND LEXAPRO   )   MDL DOCKET NO. 1736
PRODUCTS LIABILITY LITIGATION   )   ALL CASES

MEMORANDUM AND ORDER

Plaintiffs move for an extension of time or a stay of defendants' motion to

dismiss based upon federal preemption. Plaintiffs contend that they need to

conduct discovery before they are able to adequately respond to the pending

motion.

I will deny defendants' motion to dismiss without prejudice. The United

States Supreme Court has granted certiorari in <u>Levine v. Wyeth</u>, No. 2004-384, ---

A.2d ----, 2006 WL 3041078 (Vt., Oct. 27, 2006), cert. granted, 552 U.S. ----, 128

S.Ct. 1118, 169 L.Ed.2d 845, 2008 WL 161474 (2008), to consider the following

issue:

> Whether the prescription drug labeling judgments imposed on
> manufacturers by the Food and Drug Administration ('FDA')
> pursuant to FDA's comprehensive safety and efficacy authority under
> the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.,
> preempt state law product liability claims premised on the theory that
> different labeling judgments were necessary to make drugs
> reasonably safe for use. Pet. for Cert. in Wyeth v. Levine, O.T.2007,
> No. 06-1249, p. I.

Riegel v. Medtronic, Inc., 128 S.Ct. 999, 1019 n.16 (Feb. 20, 2008).[1] Because I

find that the plaintiffs are entitled to conduct discovery on the preemption issue

before filing a response to the motion and the Supreme Court is scheduled to

decide the Levine case this term, I will deny the motion without prejudice to being

re-filed following discovery, if appropriate.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to dismiss [#336] is

denied without prejudice.

IT IS FURTHER ORDERED that plaintiffs' motion for extension of time

[#342] is denied as moot.

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RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 24th day of July, 2008.

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[1]The defendants cite to the FDA's amicus curiae briefs from Levine as
evidence in support of their motion to dismiss.

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